

## **Exhibit B**

**STATE OF NEW JERSEY v NAEEM MILLER -- March 22, 2005**

SHEET 1

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION, CRIMINAL PART  
ESSEX COUNTY  
INDICTMENT NO. 03-05-1830  
APP. DIV. NO.

STATE OF NEW JERSEY, )  
 )  
Plaintiff, ) TRANSCRIPT  
 ) of  
vs. ) JURY TRIAL  
 )  
NAEEM MILLER, )  
 )  
Defendant. )

Place: Essex Co. Courthouse  
50 West Market St.  
Newark, N.J. 07102

Date: March 22, 2005

BEFORE:

HONORABLE THOMAS R. VENA, J.S.C. and JURY

TRANSCRIPT ORDERED BY:

LOUIS G. GONNELLA, ESQ. (Office of the Public Defender,  
Appellate Section, 9th Floor, 31 Clinton St., Box 46003,  
Newark, N.J. 07101)

APPEARANCES:

GREGORY DeMATTIA, ESQ., Assistant Prosecutor  
Attorney for the State

JONATHAN D. GORDON, ESQ.  
Attorney for Defendant

Transcriber Catherine Weigel  
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## STATE OF NEW JERSEY v NAEEM MILLER -- March 22, 2005

SHEET 2

2

## I N D E X

	Page
MOTION IN LIMINE ARGUMENT	
BY: MR. GORDON	4,11
BY: MR. DeMATTIA	7,14
DECISION	14
MOMTION TO SUPPRESS EVIDENCE ARGUMENT	
BY: MR. GORDON	19
BY: MR. DeMATTIA	23
DECISION	27
JURY INSTRUCTIONS	32

## Colloquy

3

1 THE COURT: Would somebody ask Victoria if  
2 she wants to come out and join us? All right. This is  
3 STATE VS. NAEEM MILLER, Indictment 03-05-1830. Is that  
4 the right number? Yes. Okay. Appearances.  
5 MR. DeMATTIA: Gregory DeMattia, Assistant  
6 Prosecutor, for the State.  
7 MR. GORDON: Jonathan Gordon on behalf of Mr.  
8 Miller, who is present in the court. Good morning,  
9 Your Honor. If I may respectfully request at this time  
10 if Mr. Miller's handcuffs could be moved to the front.  
11 THE COURT: Wait until both officers are here  
12 and then let me hear what they have to say about that.  
13 MR. GORDON: Thank you, Your Honor.  
14 THE COURT: In the meantime?  
15 COURT OFFICER: She's on her way, Judge.  
16 THE COURT: Okay. Mr. Gordon has requested,  
17 Officer, that Mr. Miller be cuffed on the front. I  
18 have no objection as long as you don't.  
19 COURT OFFICER: Well, the procedure, Judge,  
20 is behind. That's the way they want us to do it.  
21 THE COURT: All right. And we'll -- we'll --  
22 I have to concede security-wise to their -- to their  
23 direction. Once we get to the point of -- of testimony  
24 then even if it's in a -- even if it's outside the  
25 presence of the jury I'll ask him to be cuffed in the

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## STATE OF NEW JERSEY v NAEEM MILLER -- March 22, 2005

SHEET 3

Colloquy / Argument - Gordon

4

1 front so that he can take notes or do things of that  
2 sort.

3 MR. GORDON: Thank you, Your Honor.

4 THE COURT: But at this point it's -- I don't  
5 find that the necessity outweighs the instructions that  
6 the officers have been given with regard to security.  
7 Okay?

8 MR. GORDON: Thank you, Your Honor.

9 THE COURT: We're here outside the presence  
10 of the jury on two motions prior to selection of the  
11 jury, both of them filed by the defendant. One is a  
12 motion to suppress identification evidence, in essence  
13 a request for a WADE hearing, the other being a motion  
14 in limine to bar alleged flight evidence.

15 I've read the papers and, Mr. Gordon, if  
16 there's anything that you want to highlight or -- or  
17 something in addition that you want to bring to my  
18 attention now is the opportunity.

19 MR. GORDON: Thank you, Your Honor. Your  
20 Honor, I'm going to substantially rely on the papers  
21 and just very briefly highlight just a couple of  
22 points, if I may?

23 THE COURT: Sure.

24 MR. GORDON: Your Honor, I think STATE VS.  
25 MANN is instructive here, 132 New Jersey 410. That's a

Argument - Gordon

5

1 1993 New Jersey Supreme Court case. While in that case  
2 the defendant attempted suicide, I believe if The Court  
3 has read that case you'll see that our Supreme Court  
4 dealt with that issue in the context of the rationale  
5 surrounding the potential admission of flight evidence  
6 because it was evidence subsequent to the crime, which  
7 may have been probative on the issue of guilt.

8 I think STATE VS. MANN strongly indicates  
9 that a hearing might be necessary in connection with a  
10 flight issue because the court has to be strong in its  
11 belief after hearing the evidence that, in fact, the  
12 probative value of the flight evidence would outweigh  
13 the prejudicial effect. I just want to say, Your  
14 Honor, that I think that anything related to where  
15 Naeem Miller was arrested, and the date of the arrest,  
16 and all of that relating to what I'll call the  
17 Scranton, Pennsylvania circumstances. I know The Court  
18 is familiar with that based upon some discussions  
19 counsel have had with The Court in chambers just  
20 outlining the facts alleged by the State and the  
21 position of the defense on that issue. The Scranton,  
22 Pennsylvania factor I think would clearly be  
23 prejudicial to this defendant. And, frankly, I don't  
24 see how the State could show Your Honor that it has a  
25 need for this evidence that would outweigh that

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SHEET 4

Argument - Gordon

6

1 potential evidence because, as we know, this case is an  
 2 alleged identification case -- what we'll call an I.D.  
 3 case. If the I.D. witnesses that are anticipated come  
 4 to court and they identify this defendant, then the  
 5 State will have what seems to be a level of proof that  
 6 may be persuasive to the jury, and they don't need the  
 7 speculation of the issues of Scranton, Pennsylvania.

8 As Your Honor knows, there's also an issue  
 9 about Cleveland, Ohio. When Naeem was arrested in  
 10 Pennsylvania there became an issue about whether or not  
 11 there was some type of warrant for conduct allegedly  
 12 committed in the State of Ohio. And so all of that, if  
 13 it does come in, Judge, is going to be very speculative  
 14 and ineffective. It may even have to push Naeem to  
 15 have to testify to explain it, and so I think when The  
 16 Court balances everything I'm just respectfully  
 17 requesting that we speak to the officers, or we hear  
 18 from the officers in a hearing to determine exactly  
 19 what they did and how they did it, such that we could  
 20 say with the proper level of proof that The Court would  
 21 be satisfied that he knew there was some kind of  
 22 investigation going on where he was wanted for  
 23 questioning or wanted on a warrant for murder. And so,  
 24 therefore, we could determine that it's reasonable to  
 25 say that there's a connecting of the dots between the

Argument - Gordon / DeMattia

7

1 events of law enforcement and Naeem Miller in the weeks  
 2 and months after the shooting, all the way up to more  
 3 than two years later when he's arrested in  
 4 Pennsylvania,

5 THE COURT: Thank you, Mr. Gordon. Mr.  
 6 DeMattia?

7 MR. DeMATTIA: Thank you, Your Honor. I know  
 8 that we have had discussions to attempt to narrow the  
 9 issue to make things move a little bit smoother and I  
 10 appreciate that. However, I briefly believe someone  
 11 has to put something on the record with regard to sort  
 12 of a little bit of a time frame here.

13 The State alleges this incident of homicide  
 14 occurred on 12-16-2001 outside of Toby's Lounge, 966  
 15 Bergen Street, City of Newark. The State alleges at  
 16 that time that the defendant in court, Naeem Miller,  
 17 was responsible for the killing and wounding of another  
 18 individual, killing of a Mr. Timothy Phillips and the  
 19 wounding of a Mr. Stacy Davis, and from that point he  
 20 fled the scene.

21 Once the officers started to investigate the  
 22 case and starting to narrow their focus, there was a  
 23 time when Mr. Davis, I believe, was the first one to  
 24 actually make an identification with regard to the  
 25 perpetrator, that being December 21st, 2001. December

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## STATE OF NEW JERSEY v NAEEM MILLER -- March 22, 2005

SHEET 5

Argument - DeMattia

8

1 -- In January -- January 18th of 2002 -- finally Judge  
 2 Fullilove was approached and we provided probable cause  
 3 and he signed an arrest warrant for Naeem Miller for  
 4 the acts of December 16th, 2001. Based upon that  
 5 warrant both Investigator Ben Powell, I guess who I  
 6 should establish at this point was unfortunately killed  
 7 in a motorcycle accident in August of last year and  
 8 obviously will not be a witness -- However, his  
 9 counterpart December Murad Muhammad and other  
 10 detectives from Newark Police Department indicated in  
 11 writing on at least two occasions going with this  
 12 warrant and with another wanted poster, which Your  
 13 Honor can view if so desired, to the last known address  
 14 of Naeem Miller, speaking to both a brother and a  
 15 father of Naeem Miller, indicating that they have an  
 16 active warrant for him. They did say approximately,  
 17 not an exact time frame, approximately two months  
 18 before, because of behavioral problems or whatever, he  
 19 was put out of the house, but they indicated that if  
 20 they saw him they would relay the information to him.

21 Posters were left at the location. Posters  
 22 were placed in the neighborhood for Naeem Miller, the  
 23 arrest of Naeem Miller. There's one other documented  
 24 case of Murad Muhammad and another detective going back  
 25 to the location, leaving their cards again, not

Argument - DeMattia

9

1 speaking to anyone, but canvassing the area one more  
 2 time.

3 From that point on, in December of 2001 to  
 4 January of 2002 both Detective Powell and Murad  
 5 Muhammad conduct their investigation. They have other  
 6 cases, of course, they work on, but they always have an  
 7 open warrant to deal with. Phone calls are made to  
 8 various states because of information received, such as  
 9 North Carolina, Cleveland, and then ultimately we're  
 10 brought to Scranton, Pennsylvania. The reason why  
 11 these phone calls were made, contact with the local  
 12 authorities were made, was obvious. If they had made  
 13 contact with Naeem Miller they would have arrested him.  
 14 But for him being on the run they had to try to track  
 15 him down until ultimately we come to the Scranton,  
 16 Pennsylvania incident where he's out on the street with  
 17 another individual apparently acting in a disorderly  
 18 and drunken manner. Police approach him in an attempt  
 19 to quiet him down and the other individual. There is  
 20 some type of continued disorderly conduct. He takes  
 21 off running. He eventually is apprehended and to the  
 22 arresting officer he had given the name -- I forget  
 23 what name -- Mr. Wheeler, and he's brought down to the  
 24 booking officer in Scranton, Pennsylvania, and he gives  
 25 the name of I think it was Steven Cruz, until finally,

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SHEET 6

Argument - DeMattia

10

1 because the procedure is to book them, you fingerprint  
 2 them and fingerprints don't tell a lie, he indicates  
 3 that, well, my name is Naeem Miller and, of course,  
 4 there's a hit because there has been a nation-wide  
 5 warrant put out for this individual -- he's wanted for  
 6 murder.

7 The fact that Mr. Gordon indicates, well, Mr.  
 8 Naeem Miller might be forced to get up and testify to  
 9 explain maybe he was vacationing in Cleveland, maybe he  
 10 was vacationing in Scranton, doing some skiing or  
 11 whatever, that's his choice, but it doesn't impact your  
 12 decision as to whether that is indeed flight  
 13 information. As a matter of fact, I'm entitled to tie  
 14 up all loose ends in front of a jury to say how he was  
 15 actually apprehended. So to say that that's totally  
 16 immaterial I think is -- is -- is rather a weak  
 17 argument at this particular time because it's part of  
 18 the investigation. He was arrested on the warrant.

19 Now, Your Honor, I say this. None of the  
 20 fact of his disorderly conduct, his drunken behavior,  
 21 the chase, may indeed be too prejudicial to come out in  
 22 the context of this homicide trial. But with the  
 23 proper sanitization that the case law talks about with  
 24 regard to testimony, I believe that it can come out  
 25 that these officers did come into contact with Naeem .

Argument - DeMattia / Gordon

11

1 Miller. However, he did not choose to give his proper  
 2 name on two occasions, and then once his true identity  
 3 was discovered he was arrested on the outstanding  
 4 homicide warrant. Now that all goes to flight and  
 5 consciousness of guilt, and I say that it is relevant  
 6 for those two reasons.

7 THE COURT: Thank you, Mr. DeMattia. Any  
 8 reply, Mr. Gordon?

9 MR. GORDON: Briefly, Your Honor. Just I  
 10 know Mr. DeMattia did not address the prejudice  
 11 argument except to say, well, we won't bring in  
 12 information about was he drunk in public in  
 13 Pennsylvania, but we will bring in the fact that he  
 14 gave an alias to the police. You know, Your Honor,  
 15 that's not the whole story. As I indicated in chambers  
 16 yesterday what the State's discovery shows the Scranton  
 17 discovery, as I'll call it, indicates that while he did  
 18 give two different names at that time, and he and his  
 19 co-defendants did run away from the police, he did give  
 20 the police the correct address where he was living, and  
 21 the police simply went to that address later on that  
 22 day or that night, or very shortly thereafter, and  
 23 there he was lying on the bed. When he was brought to  
 24 police headquarters it's indicated he gave the name  
 25 Steven Cruz, but then almost immediately apparently

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SHEET 7

Argument - Gordon

12

1 gave his true name and date of birth. There's no  
 2 indication that he had been fingerprinted at that time  
 3 or whether we even knew he was to be fingerprinted at  
 4 that time. I don't think the State is entitled in a  
 5 blanket statement just to tie up all loose ends in a  
 6 case. I don't think the jury necessarily needs to know  
 7 where Mr. Miller was arrested. In fact, they know Mr.  
 8 Miller has been brought before the court, the jury will  
 9 be told there's an indictment in this case, and while  
 10 it's not evidence of guilt, it brings the defendant  
 11 with notice of the charges before the court and jury.  
 12 They're going to know that he's here. If the  
 13 identification witnesses identify him and the State  
 14 puts its proofs on as to identification, Mr. Miller is  
 15 here to pleading not guilty as to the charge, so that's  
 16 what happens in a criminal case. The State doesn't  
 17 just get to tie up all loose ends.

18 If there's prejudice, Your Honor, and what  
 19 I'm saying is the idea that Mr. Miller is now arrested  
 20 two-and-a-half years later in Pennsylvania, well, then  
 21 anybody who is ever arrested after allegedly committing  
 22 a crime in another state could be deemed to have  
 23 committed flight with consciousness of guilt. We know  
 24 that if the defendant is allegedly the perpetrator,  
 25 then if they've left theoretically then anybody could

Argument - Gordon

13

1 be charged or considered to have flown the coop with  
 2 consciousness of guilt. And so what I'm saying here,  
 3 Your Honor, is there's simply not enough evidence to  
 4 connect the dots to say that there's no prejudice to  
 5 Mr. Miller. We also know that there was a warrant for  
 6 him from Ohio, and so now what happens? Does Mr.  
 7 Miller have to say no, I wasn't running from anything  
 8 in Newark because I didn't do anything in Newark, but I  
 9 knew there was a warrant for me in Ohio for murder. I  
 10 don't understand how the State can't understand that  
 11 that potentially prejudices him, and he may have to  
 12 start explaining that. And so just because he -- he  
 13 may have to start explaining that that doesn't mean,  
 14 well, that's his risk and we don't care. The State is  
 15 seeking justice in this case, Judge, not just a  
 16 conviction. Certain evidence should come out if it's  
 17 proper, it's probative and relevant. In this case I'm  
 18 suggesting to you that the prejudice to Mr. Miller of  
 19 having to explain the fact, well, there was also a  
 20 warrant for me in Ohio and all those possibilities of  
 21 what might now happen dramatically overrides the need  
 22 of the State to bring in this evidence or tie up loose  
 23 ends, and if the defendant is prejudiced in this  
 24 criminal case then I submit to Your Honor that that  
 25 would not be fair.

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## STATE OF NEW JERSEY v NAEEM MILLER -- March 22, 2005

SHEET 8

Argument - DeMattia / Decision 14

1 THE COURT: Thank you, Mr. Gordon. Is there  
2 something pressing?

3 MR. DeMATTIA: Yes, I -- I disagree with --

4 THE COURT: Otherwise we -- I figured you  
5 did.

6 MR. DeMATTIA: Yes, with the amount of  
7 prejudice that he's stating, particularly it's  
8 irrelevant whether he has to think, well, am I wanted  
9 for the one in Cleveland or the one in New Jersey?  
10 That has no bearing. It's his actions that one can  
11 make reasonable inferences from in the weighing  
12 process.

13 THE COURT: All right. STATE VS. MANN, 132  
14 N.J. 410 is what provides us with a direction here.  
15 The issue is whether or not the jury could reasonably  
16 believe, or reasonably could infer, based upon the  
17 evidence as has been described that -- that -- that the  
18 -- the defendant attempted to flee or did, in fact,  
19 flee from -- from an attempt to secure his -- attempt  
20 to arrest him for the crime in the State of New Jersey.

21 Whether or not the evidence shows that is  
22 going to depend upon the testimony that we hear during  
23 the course of the trial. The jury is entitled to make  
24 a determination as to whether or not that evidence is  
25 sufficient to enable them to find that the evidence --

Decision 15

1 the acts of Mr. Miller as described, if found to be  
2 credible, that is, a credible description of what --  
3 what he did or didn't do, or what he knew or didn't  
4 know, the jury is entitled to find, and infer from that  
5 evidence, consciousness of guilt, and the jury will be  
6 appropriately instructed should that evidence be  
7 forthcoming.

8 It's impossible to know beforehand whether or  
9 not that's the -- that's the evidence that we're going  
10 to hear. I don't think it's necessary for us to  
11 conduct a hearing in order to determine whether that --  
12 that's going to be the case, because the hearing is  
13 really to determine whether or not the testimony is  
14 credible. Assuming, based upon Mr. DeMattia's proffer,  
15 the evidence will show -- or the evidence will be what  
16 he is suggesting it is -- clearly it's probative. I  
17 don't think anybody disagrees that it's -- that it's  
18 probative.

19 Mr. DeMattia is correct when he indicates  
20 that almost in any trial there is a need on the part of  
21 the State to show not only that -- that the defendant  
22 beyond a reasonable doubt acted in a way that it's  
23 suggested that by the indictment that he acted, it's  
24 also necessary for the State to show beyond a  
25 reasonable doubt that the -- that the acts of law

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## STATE OF NEW JERSEY v NAEEM MILLER -- March 22, 2005

SHEET 9

Decision

16

1 enforcement authorities were such as to lend credence  
2 to its evidence as to the elements -- or the acts that  
3 constitute the elements of the offense charged.

4 It is a significant road to hoe, a huge  
5 burden that is very difficult to overcome, and absent  
6 undue prejudice, the State is entitled to the  
7 introduction of evidence, admissible evidence,  
8 probative evidence, that -- that it believes will  
9 assist it in showing beyond a reasonable doubt that the  
10 defendant acted in the manner in which it is alleged.

11 Clearly the proffered evidence, if found to  
12 be credible within the meaning of the law, would be  
13 probative on the issue of consciousness of guilt.  
14 Consciousness of guilt, of course, goes a long way to  
15 proof beyond a reasonable doubt that the acts occurred.  
16 The law recognizes that one is not conscious of guilt  
17 and acts in such a way that -- that a guilty person  
18 acts when one is not guilty. And evidence of that is  
19 -- is admissible.

20 Now, STATE VS. MANN instructs us, though,  
21 that there are exceptions to -- to what it is that I  
22 just said. I mean, exception is not any prejudice.  
23 Any evidence that goes to the defendant's guilt is  
24 prejudicial, so virtually any -- anything offered by  
25 the State is going to be prejudicial, if you define as

Decision

17

1 prejudicial that information provided, or the evidence  
2 provided, goes towards whether or not the defendant  
3 committed the crime that he's charged with. So the  
4 question is not prejudice. It's undue prejudice and  
5 whether or not the prejudice outweighs the probative  
6 value. In other words, whether or not it would enable  
7 the jury for some improper reason to find the defendant  
8 guilty as opposed to actual evidence of guilt.

9 So here there is no undue prejudice, none, in  
10 fact, that I can even see that -- that's -- that is  
11 suggested. The prejudice that is suggested is, well,  
12 if the jury gets to hear this they may actually use  
13 this evidence to find the defendant guilty. Well,  
14 that's why it's being offered by the State and,  
15 therefore, is perfectly and entirely proper.

16 Now, the sanitation suggested by Mr. DeMattia  
17 is -- is, I think, appropriate at least as to the fact  
18 that Mr. Miller was wanted for a homicide in Ohio, and  
19 I instruct Mr. DeMattia to instruct his witnesses that  
20 this proceeding -- that questions he asks must be  
21 tailored and, in fact, some -- some leading questions  
22 will be permitted in order to avoid any accidental or  
23 deliberate attempt to tell this jury that Mr. Miller is  
24 wanted for -- or was wanted at that time -- for -- for  
25 a homicide in Cleveland.

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## STATE OF NEW JERSEY v NAEEM MILLER -- March 22, 2005

SHEET 10

## Decision

18

Now, if Mr. Gordon tactically determines that that's appropriate information at the time to -- to convey to the jury, well, that's on him. It's not -- It would be not beyond the scope of appropriate cross-examination if he wanted to attempt to rebut the consciousness of guilt issue by suggesting that the defendant fled not because he was wanted for murder in New Jersey but because he was wanted for murder in Ohio, it's not as bizarre as that might sound. Nevertheless, that opens the whole new scope of the inquiry that -- that in my view is best left alone. But that's not for me to determine at this point. But until the defendant opens that door it must remain shut.

So I find that the -- the proposed evidence of flight is wholly admissible with the caveat under STATE VS. MANN that I just mentioned.

Now, Mr. Gordon, you have also asked for in effect a WADE hearing. You understand it is your obligation to before there is to be a WADE hearing to convince The Court that there is -- that there is some evidence of the fact that there was some taint, some improper process in the course of the identification. I'm looking for the word and it's escaping me at the moment.

## Colloquy / Argument - Gordon

19

MR. DeMATTIA: Suggestiveness, Your Honor?

THE COURT: Suggestiveness -- improper suggestiveness that occurred in the -- in the proceeding -- the identification proceeding that you suggest. Now, my understanding from reading your papers and from discussions we've had with regard to the -- the -- the proposed WADE hearing is not so much that you're suggesting in and of itself that the events that resulted in the identification that Mr. DeMattia is proffering contains some taint or evidence of suggestiveness in and of itself, but that there was some other identification proceeding that may have lent a suggestiveness to the -- to the identification proceeding that Mr. DeMattia is attempting to introduce. Did I state that correctly?

MR. GORDON: You did, Your Honor.

THE COURT: Okay. Anything else you want to add to that?

MR. GORDON: Your Honor, the -- there were, in effect, two separate attempts, I believe, to have Mr. Davis identify a photograph of the shooter in this case. But even before that there was evidence that Mr. Davis had been asked by Newark police if he had any knowledge of who shot him and if he could provide a description. He indicated to the Detective DeFabio

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SHEET 11

Argument - Gordon

20

1 that he had no knowledge of who shot him and could not  
 2 identify anyone. Despite that -- and that was on  
 3 December 16th of 2001 -- on December 18th of 2001 they  
 4 went to the hospital, detectives -- Investigator Powell  
 5 and Detective Muhammad went to University Hospital to  
 6 interview Davis, and what they did --

7 THE COURT: Well, let me interrupt for a  
 8 second. You're not suggesting because he initially  
 9 said he couldn't identify anybody that it was somehow  
 10 improper for them to attempt to secure an  
 11 identification.

12 MR. GORDON: No, Your Honor, I'm not saying  
 13 it was improper for them to attempt to do that.

14 THE COURT: Okay.

15 MR. GORDON: I'm simply putting that into the  
 16 equation, the timeline of events --

17 THE COURT: I understand.

18 MR. GORDON: -- and, Your Honor, it's also  
 19 clear from the discovery provided by the State that the  
 20 day after the shooting, after Mr. Davis said he  
 21 couldn't identify anyone, they canvassed the area of  
 22 the shooting again and indicated that street talk  
 23 indicated that Naeem Miller was the shooter. However,  
 24 there's nothing in the reports at all, which I think  
 25 raises a question immediately as to why any of these

Argument - Gordon

21

1 people who gave such important information were never  
 2 identified, no contact information was noted in the  
 3 report. There was no indication whatsoever of the  
 4 source of knowledge of any of these people, if it was  
 5 eyewitness accounts or if it was just mere street  
 6 hearsay. Based on that they obtained a photo, went to  
 7 the hospital the next day to see Mr. Davis, who was  
 8 recovering from surgery for the gunshot wound to the  
 9 leg. They did not ask him if he was under the  
 10 influence of any medication at that time, or anything  
 11 that might impair his judgment. I think it's  
 12 reasonable to -- to believe that Mr. Davis may have  
 13 been under some pain medication, it being the day after  
 14 his surgery. Apparently six photos were shown to Mr.  
 15 Davis, one of them being of the defendant, in  
 16 sequential order. However, for some reason, again  
 17 inexplicably, there's no notation of anything related  
 18 to any of these photographs, who they were, any  
 19 identifying numbers whatsoever, as to what photos were  
 20 shown to Mr. Davis. So we don't know, quite frankly,  
 21 Your Honor, what level of suggestiveness there was in  
 22 that initial encounter because the State can't provide  
 23 the defense or The Court with any photo array or any  
 24 photos that would be in the sequential photo  
 25 identification process.

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## STATE OF NEW JERSEY v NAEEM MILLER -- March 22, 2005

SHEET 12

Argument - Gordon

22

1 We know that three days later they went back  
 2 to him again and showed him six photos again. But on  
 3 that occasion they did what we would have expected them  
 4 to do the first time, which was provide Mr. Davis with  
 5 a photo display instruction form, have him read it,  
 6 understand it and execute it, and then they showed him  
 7 photographs which we can identify and which we can all  
 8 see to determine if, in fact, the photo identification  
 9 process was fair and reasonable. We can't do that with  
 10 the first one, and so that in and of itself I think  
 11 requires a hearing so The Court can determine if the  
 12 photo -- the photos that were shown the first day,  
 13 December 18th, are the same photos that were shown on  
 14 December 21st, because then The Court at least would  
 15 have some level of satisfaction that there were no  
 16 Constitutional violations, that there was no  
 17 suggestiveness or problem with the photos that were  
 18 shown, or any information that was given to Mr. Davis  
 19 at the time as to the fact that they've gotten Mr.  
 20 Miller's photo based upon people around the area saying  
 21 that Naeem Miller was the shooter. All of this, I  
 22 think, in fairness to the defendant would need to be  
 23 fleshed out at a hearing. It's difficult for me to say  
 24 that The Court can be convinced now, or that I can even  
 25 show the proof that there was impermissible

Argument - Gordon / DeMattia

23

1 suggestiveness. I can only show that there appears to  
 2 be a strong possibility, if not probability, of a taint  
 3 there, and I could be wrong, but how can The Court be  
 4 satisfied that the second identification wasn't tainted  
 5 by the first one if we don't know what photos were  
 6 shown, and I think at a minimum a short hearing would  
 7 at least satisfy The Court that the photos that were  
 8 shown did not create a taint. That's the problem that  
 9 we have here because it's inexplicable to me that none  
 10 of this information would be noted in the report when  
 11 what occurred three days later was noted and was  
 12 followed with a procedure that we would have expected  
 13 on the second day. So that's the basis for my concern,  
 14 Your Honor.

15 THE COURT: And I could speculate as to a --  
 16 a not-improper reason, albeit it perhaps in error, why  
 17 -- why such information doesn't exist or wasn't  
 18 preserved, but that would be just speculation, wouldn't  
 19 it, Mr. DeMattia?

20 MR. DeMATTIA: With regard to what aspect?

21 THE COURT: The -- the fact that Mr. Gordon  
 22 suggests that the discovery reveals that the initial  
 23 attempt at an identification procedure, a failed  
 24 attempt because of the -- perhaps the condition of or  
 25 the emotional state of -- of the witness, there's no,

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## STATE OF NEW JERSEY v NAEEM MILLER -- March 22, 2005

SHEET 13

Argument - DeMattia

24

1 other than what appears in the naked report, there's no  
 2 evidence as to what -- you know, how do I know that  
 3 they didn't show them because they had gotten Naeem  
 4 Miller's name from the street that they didn't show  
 5 him, you know, they were on the fourth picture and the  
 6 first three pictures were of, you know, 90-year-old  
 7 white men with white hair and beards. How do I know  
 8 that that isn't what happened. Because you didn't  
 9 provide him with the pictures I don't know if they  
 10 exist, whether they were discarded, and I haven't heard  
 11 anybody tell me under oath that there weren't three  
 12 white men with white beards that preceded the picture  
 13 of -- of Mr. Miller. So how do I know that without  
 14 having a hearing?

15 MR. DeMATTIA: The only thing I could say to  
 16 that argument is the following. Through my interview -  
 17 - and he was free to examine the witnesses pre-trial,  
 18 which that right is always there, I, too, found out  
 19 from Detective Murad Muhammad that at that point based  
 20 on the condition of the victim there was no further  
 21 identification attempted, and they retreated and  
 22 figured they would go back again on another occasion.  
 23 The same photographs were used on the second occasion,  
 24 Your Honor, through an interview.

25 THE COURT: I only know that because you're

Argument - DeMattia

25

1 telling me.

2 MR. DeMATTIA: Exactly, Your Honor, exactly,  
 3 so --

4 THE COURT: And -- and additionally I wonder,  
 5 as does Mr. Gordon, why -- now, I'm not suggesting.  
 6 Maybe Mr. Gordon does, but I'm not suggesting that  
 7 there is any specific requirement that one use photo  
 8 identification forms to provide the witness certain  
 9 information and instructions and all that. In the  
 10 actual identification procedure that you're going to  
 11 introduce presumably you're going to provide all that  
 12 information to The Court and to the jury.

13 Mr. Gordon says that at least as far as he  
 14 knows that information doesn't exist as to the prior  
 15 one. Well, perhaps that's because they decided that  
 16 they were going to abandon the entire -- I don't know.  
 17 How do I know without hearing from them?

18 MR. DeMATTIA: Well, Your Honor, I would  
 19 suggest that we bring up Detective Murad Muhammad to  
 20 briefly put him on the stand. However, Your Honor, one  
 21 -- one point with regard to the time frame of this  
 22 incident. It's 2002. I have no idea, nor am I  
 23 interested, in what was a guideline. First of all,  
 24 guidelines are guidelines. I would assume they have no  
 25 business in the courtroom, because then if guidelines

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## STATE OF NEW JERSEY v NAEEM MILLER -- March 22, 2005

SHEET 14

Argument - DeMattia

26

1 had been followed then, of course, Your Honor would say  
 2 no need for any type of WADE hearing that could direct  
 3 the jury to say that guidelines were followed so ipso  
 4 facto there's no prejudice, it's a perfect photo  
 5 display. So guidelines really have no bearing, and I  
 6 would obviously object to whether there was a  
 7 guideline, because they're guidelines. They have no  
 8 basis in law, and to ignore a guideline or not ignore a  
 9 guideline, at what particular time they were enforced,  
 10 the transition period, especially in this case of 2001  
 11 into 2001, I have no idea, I have no concern frankly as  
 12 to whether it was in effect the suggestive way of doing  
 13 it. So --

14 THE COURT: Well, the purpose of a guideline  
 15 is -- is just that, to guide, and the reason why the  
 16 officers are guided in that manner is to ensure that  
 17 there was no improper suggestiveness. The issue for me  
 18 to determine is whether there was improper  
 19 suggestiveness. If they followed guidelines and the  
 20 guidelines were such as to suggest that there was no  
 21 improper suggestiveness then that would be appropriate  
 22 information to provide. The fact that there are  
 23 guidelines and they may not have followed them is not  
 24 evidence of the fact that there was improper  
 25 suggestiveness. Evidence of improper suggestiveness I

Argument - DeMattia / Decision

27

1 will certainly hear if that's what's offered.

2 MR. DeMATTIA: But I think to expedite  
 3 matters, Your Honor, Detective Muhammad is downstairs.

4 THE COURT: Yes.

5 MR. DeMATTIA: Would you like me to --

6 THE COURT: No, especially with something --  
 7 I don't know -- we have 70, 90 or something jurors and  
 8 it's now 5 to 10. We'll certainly hear from Detective  
 9 Muhammad, I think. So you're not disagreeing that we  
 10 need to have some kind of a hearing -- some kind of a  
 11 WADE hearing at this point?

12 MR. DeMATTIA: Abundance of caution, Your  
 13 Honor.

14 THE COURT: Yes. So we're going to have one  
 15 and we're going to have one before -- before the jury  
 16 is sworn. But I don't want to do it now because I  
 17 don't want to leave the jury sitting in the hall.  
 18 Okay?

19 MR. DeMATTIA: I do have one question, also.  
 20 I apologize. I'll make it quick. With regard to  
 21 clarification for the direction of the prosecutor here,  
 22 it was never my intent to never mention it because of  
 23 the obvious impact, a possible mistrial, that Mr. Naeem  
 24 had a murder warrant, indictment, or whatever it was,  
 25 out in Cleveland, Ohio.

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## STATE OF NEW JERSEY v NAEEM MILLER -- March 22, 2005

SHEET 15

Colloquy

28

1 THE COURT: Good.

2 MR. DeMATTIA: No, no. But, Your Honor, I do  
3 intend to ask my detective what efforts were made to  
4 locate -- It happened December 16th, 2001, and what  
5 did you do up and until he was found, you know, both  
6 him and Detective Powell based on information received?  
7 Not unusual. Did contact authorities in several states  
8 because he could not be found, and I intend to go into  
9 that with him, not we contacted Cleveland because he  
10 had a murder warrant in Cleveland, no, no. But they  
11 made efforts to locate him in a couple of different  
12 states.

13 MR. GORDON: Judge, if I may?

14 THE COURT: Without repeating something you  
15 certainly said?

16 MR. GORDON: Certainly. Thank you. While I  
17 understand about the testimony of what they did in  
18 Newark in the month of January or early February of 2--  
19 2, there is absolutely nothing in the discovery that  
20 any efforts that were made, any phone calls that were  
21 made. There's a discussion in a -- in a wanted  
22 teletype or something that the suspect may have fled to  
23 North Carolina, but there's nothing in there about any  
24 efforts they made, nothing about their conduct in  
25 trying to find Mr. Miller and tracking him down, and

Colloquy

29

1 there's nothing. There's nothing about any source of  
2 information so I think that would be inappropriate to  
3 bring now before the jury that they did something that  
4 we're just hearing about now. If we're talking about  
5 disseminating wanted flyers and talking to Naeem's  
6 father and brother at the house, well, I understand  
7 that. That's in the discovery. But anything else that  
8 they did beyond February of 2001 prior to Scranton  
9 calling and telling Newark they had a hit on a guy in  
10 custody, I don't see how that could come in now.

11 THE COURT: I disagree, Mr. Gordon. It's  
12 clear that that kind of information is more than  
13 appropriate and, in fact, necessary to make -- to tie  
14 in Mr. Miller's alleged acts at the time of  
15 apprehension, unless there's evidence provided of  
16 efforts made to locate Mr. Miller in the interim and  
17 evidence of the fact that there is -- that he knew or  
18 should have known the fact that he was wanted for  
19 murder in New Jersey, and what he did or didn't do in  
20 Scranton is not going to have a whole heck of a lot of  
21 relevance. So I think if I don't hear -- if I don't  
22 hear that first your objection as to -- as to the  
23 Scranton testimony would be appropriate.

24 MR. GORDON: Well, now I'm confused, Judge,  
25 if I may just again. That's why my -- my objection

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## STATE OF NEW JERSEY v NAEEM MILLER -- March 22, 2005

SHEET 16

Colloquy

30

1 stood because there is no evidence in the record as to  
 2 what occurred between the time the wanted flyer being  
 3 disseminated and then the Scranton arrest. That was  
 4 the basis of my argument. Now The Court is saying, I  
 5 think -- and I could be wrong -- that it's -- it's more  
 6 than appropriate that evidence of something they did in  
 7 the interim would come in even though I don't know what  
 8 it is and it wasn't indicated in any report that was  
 9 turned over in this case. The case wasn't indicted  
 10 until 2003, discovery turned over sometime after that.  
 11 If there had been efforts by law enforcement to arrest  
 12 Mr. Miller and track down leads and go and talk to  
 13 people, or whatever they did, presumably that would  
 14 have been memorialized in reports. There were no  
 15 reports. It's like The Court is saying to me now, I  
 16 would have had to guess or assume that those efforts  
 17 were made just because of the fact that now that he's  
 18 arrested in Pennsylvania the State wants to use that as  
 19 consciousness of guilt. If the -- if the reports are  
 20 turned over and there's no evidence in the record at  
 21 this point that efforts were made, how -- how could I  
 22 properly be prepared to meet those efforts and how  
 23 could it be appropriate that information not turned  
 24 over and not even memorialized be brought before the  
 25 jury?

Colloquy

31

1 THE COURT: Well, because it happens. I  
 2 don't think that the police were required every time  
 3 they made a phone call to make a note about it in the  
 4 report, and the fact that they didn't do that and that  
 5 therefore you don't know about it doesn't bar the --  
 6 the introduction of relevant testimony. What's --  
 7 MR. DeMATTIA: Judge, you stole my thunder.  
 8 THE COURT: Okay.  
 9 MR. GORDON: My objection noted for the  
 10 record. Thank you, Your Honor.  
 11 THE COURT: Noted. Okay. My preference  
 12 would be, I'm assuming the rest of the day for jury  
 13 selection might make sense to me unless we finish --  
 14 somehow miraculously we get a jury earlier this  
 15 afternoon than later my -- to minimize inconvenience to  
 16 the jury it might make sense to hear the WADE first  
 17 thing tomorrow morning. So wherever we --  
 18 MR. DeMATTIA: Should I call Detective  
 19 Muhammad and tell him to go about his business for  
 20 today?  
 21 THE COURT: Yes, I would think that would --  
 22 MR. DeMATTIA: I mean, he's a Newark  
 23 detective. If I need to reach out for him we could  
 24 try.  
 25 THE COURT: I think we could -- I think we

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## STATE OF NEW JERSEY v NAEEM MILLER -- March 22, 2005

SHEET 17

## Colloquy / Jury Instructions

32

1 could go as far as we can with jury selection. If  
 2 miraculously we finish at 3 o'clock then we'll just end  
 3 at 3 o'clock and have the WADE at 9 o'clock tomorrow  
 4 morning. Does that sound reasonable?

5 MR. GORDON: Yes, Your Honor.

6 MR. DeMATTIA: Judge, then I'll release him  
 7 to tell him he can go back.

8 THE COURT: But tell him now to be here at 9  
 9 o'clock tomorrow morning. Okay? We stand in recess.  
 10 We can bring the jury in and have them seated, and  
 11 we'll begin the process.

12 MR. DeMATTIA: Five minutes, Judge, 10  
 13 minutes you think?

14 THE COURT: Yes.

15 (Off the record. Back on the record.)

16 THE COURT: -- assigned here to Essex County.  
 17 As you know, we are here in order to begin the process  
 18 of selecting a jury for this case which is entitled the  
 19 STATE OF NEW JERSEY VS. NAEEM MILLER. We are about to  
 20 begin the process that we call voir dire. The purpose  
 21 of voir dire is very simple. It's to obtain a jury  
 22 that is able to hear this case without any bias,  
 23 prejudice or preconceived ideas. In short, the idea is  
 24 to select a fair jury.

25 As you know, the matter in dispute is between

## Jury Instructions

33

1 the State of New Jersey and Naeem Miller. It's a  
 2 criminal case, and it arises out of an indictment  
 3 returned by the Essex County jury wherein it is alleged  
 4 that Naeem Miller on the 16th day of December, 2001, in  
 5 the City of Newark, did purposely or knowingly murder  
 6 Timothy Phillips by his own conduct by shooting him.  
 7 It's also alleged that on that date and at that place  
 8 that Mr. Miller did purposely, knowingly or recklessly  
 9 under circumstances manifesting extreme indifference to  
 10 the value of human life, caused or attempted to cause  
 11 serious bodily injury to Stacy Davis by shooting him.  
 12 It is also charged that Mr. Miller on that date and at  
 13 that place did unlawfully possess a weapon and did  
 14 possess that weapon for an unlawful purpose.

15 I realize that jury service may be new to  
 16 some of you, so a few preliminary remarks by prove to  
 17 be helpful. The first step in a jury trial, of course,  
 18 is selection of a jury. The process is important  
 19 because both the State and the defendant are entitled  
 20 to jurors who are impartial and agree to keep their  
 21 mind open until a verdict is reached. Jurors must be  
 22 as free as humanly possible from bias, prejudice or  
 23 sympathy and must not be influenced by pre-conceived  
 24 ideas.

25 Those of you selected as jurors on this case

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**STATE OF NEW JERSEY v NAEEM MILLER -- March 22, 2005**

SHEET 18

## Jury Instructions

34

1 shall serve as judges of the facts. In other words,  
 2 you'll listen to the testimony of witnesses, examine  
 3 any physical evidence introduced and thereafter  
 4 determine the facts. I am the judge of the law, and at  
 5 the conclusion of this matter, after the evidence has  
 6 been presented and counsel made their closing  
 7 arguments, I'll tell you what the law is and you must  
 8 apply that law to the facts in order to reach a fair  
 9 and impartial verdict. Although you may be qualified  
 10 to serve as a juror in most cases there may be  
 11 something that could disqualify you in this case or  
 12 make it embarrassing to serve. In order to learn this  
 13 I'll ask you questions. Please understand the  
 14 questions I'll ask are for a legitimate purpose and not  
 15 to simply pry into your personal affairs. Do not  
 16 hesitate to speak your mind honestly and plainly. It's  
 17 very important that you answer each question fully and  
 18 truthfully. Keep in mind that there are no right or  
 19 wrong answers. Truthful and honest answers are  
 20 necessary so that a fair and impartial jury can be  
 21 selected.

22 As we mature we all to some extent develop  
 23 certain biases, prejudices, fixed opinions and views.  
 24 We develop these from our families, others around us,  
 25 the media, and from our everyday experiences. You are

## Jury Instructions

35

1 entitled to be who you are, and to feel and think about  
 2 things as you do. It's important to recognize any  
 3 biases, prejudices, fixed opinions and views that you  
 4 may have and disclose them to me during jury selection.  
 5 If for any reason my questions do not cover why you  
 6 would not be able to listen with an open mind to the  
 7 evidence in this case, or be able to reach a fair and  
 8 impartial verdict, it's necessary that you volunteer  
 9 this information to me when you are questioned. If at  
 10 any time during jury selection you wish to discuss  
 11 anything with me concerning your ability to serve as a  
 12 juror, raise your hand and at the appropriate time I'll  
 13 speak to you outside the presence of the other jurors  
 14 but in the presence of the attorneys. After I've  
 15 questioned each of you you may be excused as a juror by  
 16 me if in my opinion there's a valid reason why you  
 17 should not serve.

18 Each attorney may also excuse a limited  
 19 amount of jurors without giving any reason for doing  
 20 so. In the event you are excused please do not  
 21 consider this an insult or take it personally. It's  
 22 merely a part of the process employed in selecting a  
 23 jury as permitted by our court rules.

24 Now, as I indicated in this case, Mr. Naeem  
 25 Miller has been indicted by the Essex County grand jury

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## STATE OF NEW JERSEY v NAEEM MILLER -- March 22, 2005

SHEET 19

## Jury Instructions

36

1 accusing him of the crimes of murder, aggravated  
 2 assault, unlawful possession of a weapon and possession  
 3 of a weapon for an unlawful purpose. As I told you  
 4 yesterday, our best estimate of the time it will take  
 5 to try this case is approximately six full trial days,  
 6 perhaps longer. What that means, especially since we  
 7 have Friday is a holiday and ordinarily we do not sit  
 8 on trials on Fridays and Mondays, we anticipate that  
 9 those six days will be today, tomorrow, part of the day  
 10 Thursday, next Tuesday, Wednesday and Thursday. Now,  
 11 there's a possibility that it may extend beyond that,  
 12 and if the case does extend beyond that it will be the  
 13 -- the seventh day would probably be the following  
 14 Tuesday. So you need to be aware of that schedule now  
 15 and I'll explain to you why momentarily.

16 But first, as a criminal case there are  
 17 certain principles of law that I must advise you of  
 18 even before we begin the process of voir dire. First,  
 19 the indictment that I read to you and summarized is not  
 20 evidence of the defendant's guilt on the charges stated  
 21 in it. The defendant has pled not guilty to the  
 22 charges and is presumed to be innocent. Unless each  
 23 and every essential element of the offense charged in  
 24 the particular count of the indictment is proved beyond  
 25 a reasonable doubt, the defendant must be found not

## Jury Instructions

37

1 guilty of the offense. The reverse is also true, if  
 2 each element of an offense charged in a particular  
 3 count of an indictment is proved beyond a reasonable  
 4 doubt then the defendant must be found guilty of the  
 5 offense charged in that particular count. The burden  
 6 of proving each element of the offense charged in each  
 7 particular count of the indictment beyond a reasonable  
 8 doubt rests upon the State, and that burden never  
 9 shifts to the defendant. It's not the obligation or  
 10 the duty of a defendant in a criminal case to prove  
 11 his innocence or offer any proof relating to his  
 12 innocence. The State has the burden of proving a  
 13 defendant guilty beyond a reasonable doubt. Some of  
 14 you may have served as a juror in civil cases where you  
 15 were told it's necessary to prove only that a fact is  
 16 more likely true than not true. In criminal cases the  
 17 State's proof must be more powerful than that. It must  
 18 be beyond a reasonable doubt. The prosecution must  
 19 prove its case by more than a mere preponderance of the  
 20 evidence, yet not necessarily to an absolute certainty.

21 A reasonable doubt is a reasonable and honest  
 22 uncertainty in your minds about the guilt of the  
 23 defendant after you have given full and impartial  
 24 consideration to all the evidence. A reasonable doubt  
 25 may arise from the evidence itself or from a lack of

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## STATE OF NEW JERSEY v NAEEM MILLER -- March 22, 2005

SHEET 20

## Jury Instructions

38

1 evidence, and it's a doubt that a reasonable person  
 2 hearing the same evidence would harbor. Proof beyond a  
 3 reasonable doubt is proof, for example, that leaves you  
 4 firmly convinced of the defendant's guilt. In this  
 5 world we know very few things with absolute certainty.  
 6 In criminal cases the law does not require proof that  
 7 overcomes every possible doubt. If based on your  
 8 consideration of the evidence you are firmly convinced  
 9 that the defendant is guilty of the crime charged you  
 10 must find him guilty. If, on the other hand, you're  
 11 not firmly convinced of the defendant's guilt you must  
 12 give the defendant the benefit of the doubt and find  
 13 him not guilty.

14 You'll have to apply the law as I give it to  
 15 you regardless of your own feelings about it, and since  
 16 this is a criminal case any verdict returned by the  
 17 jurors must be unanimous. That means simply that all  
 18 12 jurors who may be selected to deliberate must agree  
 19 upon any verdict returned to The Court.

20 Now I would like to introduce you to the  
 21 attorneys. The State of New Jersey will be represented  
 22 throughout these proceedings by Assistant Prosecutor  
 23 Gregory DeMattia. I would like to ask him to rise,  
 24 introduce himself, and to state the names of persons  
 25 who will either be mentioned during the course of the

## Jury Instructions

39

1 trial or may be called as witnesses, and to specify the  
 2 location the State claims to be the scene of the crime  
 3 charged in the indictment. Mr. DeMattia?

4 MR. DeMATTIA: Thank you, Your Honor. Good  
 5 morning, ladies and gentlemen. As the judge as  
 6 indicated my name is Gregory DeMattia. I've been an  
 7 Assistant Prosecutor in this County for about 20 years  
 8 now. I'm assigned to the Homicide Squad, and following  
 9 is a list of potential witnesses in this case or names  
 10 that you may hear, people that may be called. From the  
 11 Newark Police Department Police Officer V. Poole  
 12 (phonetic), Police Officer G. Ramos, who is now  
 13 Sergeant George Ramos, Detective Joseph Webber,  
 14 Detective Louis Alcon, Detective Murad Muhammad,  
 15 Detective John LeBella. From my office, the  
 16 Prosecutor's Office, Homicide Squad, Investigator  
 17 Stanley Rosa, Investigator Nicole Berry (phonetic) and  
 18 Steven White. You may hear the name of Investigator  
 19 Dan Powell mentioned.

20 The lay witnesses are the following  
 21 individuals: Kevin Phillips from Newark, Felicia  
 22 Wright from Newark, Stacy Davis from Newark, Damos  
 23 Johnson from Newark, Thomas Anderson, Esq. from Newark.  
 24 The following is a person from the Medical Examiner's  
 25 Office, Dr. Lila Perez. She was a coroner from the

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STATE OF NEW JERSEY v NAEEM MILLER -- March 22, 2005

SHEET 21

Jury Instructions

40

County of Essex, and from the Scranton, Pennsylvania Police Department Police Officer Kyle Kemp and Police Officer Tim Charles. Oh, I'm sorry. The State alleges the following date and location to be pertinent to this trial: On December 16th, 2001 at approximately 2:35 a.m. outside a location known as Toby's or Roland's Lounge, at 966 Bergen Street, City of Newark.

THE COURT: Thank you, Mr. DeMattia. Now defendant will be represented throughout this proceeding by Mr. Jonathan Gordon. I would like to ask him to rise, introduce himself and his client, if he chooses, and to state the names of any other persons who will either be mentioned during the course of the trial or may be called as witnesses. Mr. Gordon?

MR. GORDON: Thank you, Your Honor. Good morning, everyone. My name is Jon Gordon. I'm an attorney. I'm in my 15th year of practice now. I have an office here in Newark, New Jersey. Ladies and gentlemen, in this case a couple of names that you might hear are Anjuana Williams of Newark, New Jersey, also James Haggerty, Jr., an investigator of mine. In this case, ladies and gentlemen, the accused person is Naeem Miller. I represent him in this case.

THE DEFENDANT: How are you all doing? Good morning.

Jury Instructions

41

MR. GORDON: If you recognize Naeem or if you recognize me when the judge asks you please let us know. Thank you very much.

THE COURT: Thank you, Mr. Gordon.

MR. GORDON: Thank you, Your Honor.

THE COURT: And as much as has been stated that a police or law enforcement officer may be called as a witness, I instruct you that jurors must accept and follow the principle of law that you must measure and weigh the testimony of a police or law enforcement officer by the very same standards you would measure and weigh the testimony of any other witness, giving no more nor less weight to his or her testimony simply because he or she is a police or law enforcement officer.

Now we begin the voir dire process. We start by asking two general questions. When I ask you the question, if you have an affirmative response to the question I'm going to ask you only to raise your hand. When I call on you I'm going to ask you only to stand and then state your name. When I find your name on the list and I make the appropriate notation then you can be seated. We will subsequently inquire with more specificity why you answered the way in which you did.

(Jury Selection)

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## STATE OF NEW JERSEY v NAEEM MILLER -- March 22, 2005

SHEET 22

## Colloquy

42

1 THE COURT: All right, ladies and gentlemen,  
 2 it is now 4 o'clock. We have not yet reached the point  
 3 where we can administer the oath to the seated jurors.  
 4 We are going to do that after an additional proceeding  
 5 that has to occur outside the jurors' presence. Since  
 6 the jury is not being sworn I cannot release those of  
 7 you in the remainder of the jury pool until that occurs  
 8 in the event that something happens between now and the  
 9 time in which the jury is sworn. So that I'm going to  
 10 ask you all to return tomorrow as well. That  
 11 proceeding is going to take less than an hour and we're  
 12 going to be doing that at 9 o'clock tomorrow morning,  
 13 so I'm going to ask everybody to return here at 10  
 14 o'clock tomorrow morning. If all goes well those of  
 15 you in the remainder of the jury pool will be excused  
 16 at that time. I can't excuse you until then and this  
 17 jury is not sworn. So as a result everyone would need  
 18 to check out and then check in again with Jury Control.  
 19 The usual admonitions, allow me to remind you  
 20 -- I'll give them to you in more detail tomorrow -- but  
 21 don't discuss the case among yourselves or with anybody  
 22 else. Don't even mention what kind of a case that you  
 23 believe that you'll be sitting as a juror on because to  
 24 mention that to somebody invites a response and that  
 25 would be improper. You can only make your decisions

## Colloquy

43

1 with regard to this case based upon what you hear here  
 2 in this courtroom from the witness stand or any  
 3 documents that may be or tangible items that may be  
 4 admitted into evidence, and as a result of which you  
 5 hear from me with regard to my instructions as to the  
 6 law. You can tell your family and your employers that  
 7 you're probably being seated as a juror in a criminal  
 8 case and you could tell them how long you expect it to  
 9 last, no more.  
 10 Obviously remain out of contact with anybody  
 11 who has any -- any connection with this case. If  
 12 somebody should contact you do not report that to your  
 13 fellow jurors or to anyone else other than somebody  
 14 connected with the court staff and make sure you report  
 15 that to us immediately. The officers will be available  
 16 to respond to any questions you may have on your way  
 17 out. They will certainly either answer your question  
 18 or direct you to who can. You also will know that if  
 19 there is any question that can only be answered by me  
 20 I'll certainly be available for a period of time in  
 21 order to respond to any of those questions. With that,  
 22 ladies and gentlemen, we'll see you back here at 10  
 23 a.m. tomorrow morning. Thank you very much.  
 24 (Proceedings concluded)

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**STATE OF NEW JERSEY v NAEEM MILLER -- March 22, 2005**

SHEET 23

**CERTIFICATION**

I, Catherine J. Weigel, the assigned transcriber, do hereby certify that the foregoing transcript of proceedings in the Essex County Superior Court, on March 22, 2005, Tape No. 2, Index No. 09:19:29 - 10:45:30 and 16:01:17 - 16:05:18, is prepared in full compliance with the current transcript format for judicial proceedings and is a true and accurate compressed transcript of the proceedings as recorded to the best of my knowledge and ability.



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September 9, 2005

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